

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 611 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRA C VACHHRAJANI

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI for Petitioner

MR VB GHARANIA for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/08/1999

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The facts are not in dispute that as per the Gujarat Subordinate Accounts Service Departmental Examination Rules, 1964, the petitioner has to pass the Subordinate Accounts Service Departmental Examination for appointment to the superior post, which he did not pass. Rule 5 of the aforesaid rules provides that no person

shall be eligible to appear at the examination unless he has passed the Bombay or Gujarat Accounts Clerks Examination or equivalent examination like Sub Service Departmental Examination. The petitioner applied for grant of exemption to him on condition of passing Bombay or Gujarat Accounts Clerk Examination or equivalent examination like Sub Service Departmental Examination and this was came to be granted by the respondents under the order dated 12-4-1971. By that time, the petitioner attained the age of 40 years. Under the Rules, 1964 aforesaid, the candidates who have not attained the age of 40 years are only eligible to appear in the examination and as such, the petitioner could not appear in the examination.

3. In reply to the special civil application, the respondents have come up with a case that under the Finance Department Memo No. TSN/1968/771/GH dated 25th May, 1968, the relaxation has been made on the age eligibility as provided for appearing in the Subordinate Accounts Service (S.A.S) examination under the Rules, 1964. The petitioner stated that this memo dated 20th May, 1968 was not made known or available to him and he was not informed of the same and as such, he could not take the benefit of the same.

4. In the special civil application at para-16 (5) the petitioner averred that the respondents have in 1984 given exemption to 23 employees from appearing in the examination under the Rules, 1964 under the order dated 1st September, 1984 and those persons have been given promotion under the order dated 30th November, 1985. Copy of the orders of promotion of those persons has been filed on the record of this special civil application by the petitioner as annexure 'H' and 'I'. In para-16(6) of the special civil application, the petitioner has stated that he came to know that he is entitled for benefit which has been given to 23 employees. The petitioner submitted an application to the respondents for exemption from passing the S.A.S. examination and this application has been made on 15th December, 1984.

5. The petitioner raised one of the grounds that the respondents have given the step-motherly treatment or hostile discrimination has been made amongst the persons who are similarly situated. In the case of other persons who have not passed the examination under Rules, 1964 or Rules 1975, they have been granted the exemption. Similarly, the petitioner should have been dealt with but for the reasons best known to the respondents he has been differently treated.

6. In reply to the special civil application, the respondents have given out reply to this grievance of the petitioner in the manner that the petitioner is not similarly situated with the persons who have been granted exemption from passing the S.A.S. examination and have been given the promotion.

7. This vague reply is hardly sufficient to dislodge the petitioner from his claim which is made by him for grant of exemption in the matter. It is a case where the petitioner has been given discriminatory treatment by none other than a welfare State and its officers and this Court only on the basis of the reply given by the respondents on such a serious point cannot dismiss this petition.

8. In the result, this special civil application succeeds and the same is allowed and it is hereby directed to the respondents to give exemption to the petitioner from passing the S.A.S. examination under Rules, 1964 or 1975 and further to consider his case for promotion to the next higher post with reference to the date from which 23 persons were given promotion. The petitioner in case is found suitable for promotion to the higher post or posts, he shall be entitled for all the consequential benefits. The petitioner has already retired from the Government service. In case his claim for promotion is accepted then accordingly his pension and retirement benefits may also be revised and arrears of the same may be paid to him within a period of two months from the date his claim is accepted. In case the petitioner is not found suitable for promotion he should be informed of this fact together with the grounds for not adjudging him suitable for promotion and the same may be sent to him by registered post A.D.. Rule is made absolute accordingly with a liberty to the petitioner for revival of this special civil application in case of difficulty.

zgs/-